IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

OP.No. 5420 of 2002(T)

PETITIONER:

M/S.SABARI ROLLER MILLS(P) LTD.,
KANNAMMOOLA, TRIVANDRUM, REP. BY ITS
MANAGING DIRECTOR, SRI.P.B.DEVARAJAN.

BY ADV. SRI.E.P.GOVINDAN
SRI.P.VISWAMBARAN
SRI.JOSE DAVIS

RESPONDENTS:
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1. INTELLIGENCE OFFICER,
SQUAD NO.II, COMMERCIAL TAXES,
TRIVANDRUM AT ATTINGAL.

2. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, TRIVANDRUM.

3. COMMISSIONER OF COMMERCIAL TAXES,
KERALA, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP9520 OF 2002 IN OP 5420 OF 2002

DISMISSED

30.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE INSPECTION REPORT DATED 3.12.1998 OF THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF THE RECEIPT DATED 3.12.1998 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P3 TRUE COPY OF PENALTY ORDER NO. CR026/98-99 DATED 12.7.99 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P4 TRUE COPY OF THE NOTICE DATED 10.3.1999 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER PROPOSING TO LEVY PENALTY

EXT.P5 STRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE FIRST RESPONDENT AGAINST EXT.P4 NOTICE.

EXT.P6 TRUE COPY OF THE REVISIONAL ORDER NO. RP 73/99 DATED 18.5.2001 OF THE SECOND RESPONDENT ISSUED TO THE PETITIONER.

EXT.P7 TRUE COPY OF THE REVISION ORDER NO. STRP 105/2001 (RI. 33107/01/CT DATED 13.11.2001 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 5420 OF 2002

Dated this the 30th day of November, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner is challenging Ext.P7 order whereunder the Commissioner has confirmed the penalty levied under Section 45A of the KGST Act at one and a half times of the tax confirmed in first revision. I have gone through the impugned orders also. Even though counsel for the petitioner submitted that documents mainly purchase register were not verified by the lower authorities and one more opportunity should be granted, I do not think there is any justification because all the authorities below have considered the matter in detail and suppression was proved beyond doubt. Counsel also submitted that huge addition is made in the assessment based on penalty levied. The assessment is stated to be challenged in appeal. In view of concurrent findings on fact, I uphold in principle the orders of the authorities below on levy of penalty under Section 45A of the Act for evasion of tax.

2. Counsel for the petitioner pointed out that petitioner's unit is

closed and the Managing Director died of cancer. Petitioner's case is that unless some reduction is granted, petitioner will not be able to restart the industry. Considering these aspects and the fact that substantial addition is made in the assessment under appeal, I feel the quantum of penalty sustained needs modification. In the circumstances, Ext.P7 penalty order is modified by reducing the penalty to equal amount of tax as against one and a half times sustained by the commissioner.

O.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge